

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED
DISCIPLINARY TREATMENT OF
NEW WEST HEALTH PLAN AND NEW
WEST HEALTH SERVICES

Case No. 2003-50

CONSENT AGREEMENT
AND FINAL ORDER

Respondents.

The State Auditor and Commissioner of Insurance of the state of Montana
(Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann.
§33-1-101, *et seq.*, hereby makes the following allegations which justify and support
disciplinary treatment:

FACT ASSERTIONS

1. Respondent New West Health Plan is a Montana licensed Health Maintenance
Organization, holding certificate of authority #4309 issued by the State Auditor and
Commissioner of Insurance.

2. Respondent New West Health Services is a Montana licensed Health Service
Corporation, holding certificate of authority #4308 issued by the State Auditor and
Commissioner of Insurance.

3 The Montana Insurance Department (Department) conducted a market conduct
examination beginning in May 2002 for the time period from October 1, 1999 through March
31, 2002.

4 The market conduct examination was finalized on April 23, 2003.

5. That examination revealed that Respondents New West Health Services and
New West Health Plan had failed to send a notice of insurance information practices to their

1 policyholders and certificateholders during the years 2001 and 2002. [See page 10 of the
2 Market Conduct Examination, attached hereto as Appendix I].

3 6. Respondents acknowledge that they did not send a notice of insurance
4 information practices to certificateholders and policy holders until December 2002.

5 7. Respondents collect personal information about their policyholders and
6 certificate holders.

7 8. Respondents are licensees of the insurance department.

8 9. The examination also revealed that Respondents failed to receive approval from
9 the Department before issuing their 2002 evidence of coverage form to their certificateholders.
10 [See pages 9 and 10 of Appendix I].

11 10. The 2002 evidence of coverage form was issued to an unknown number of
12 covered individuals.

13 14 CONCLUSIONS OF LAW

15 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code
16 Ann. § 2-15-1903.

17 2. The Montana Insurance Department (Department) is under the control and
18 supervision of the Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and
19 33-1-301.

20 3. The Commissioner of Insurance shall administer the Department to protect
21 insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

22 4. Pursuant to Mont. Code Ann. § 33-1-102, a person or entity may not transact a
23 business of insurance in Montana or a business relative to a subject resident, located, or to be
24 performed in Montana without complying with the applicable provisions of the Montana
25 Insurance Code.

26 5. Pursuant to Mont. Code Ann.[2001] § 33-19-202(1), after July 1, 2001, all
27 licensees must provide a clear and conspicuous notice of information practices that accurately
28

1 reflects its privacy policies and practices to all individuals about whom personal information is
2 collected by the licensee in connection with insurance transactions no later than at the time of
3 the delivery of the policy or certificate, or at the first policy renewal date after July 1, 2001,
4 and at least annually thereafter.

5 6. By failing to send notices of information practices to their covered insureds in
6 2001 and 2002, respondents violated §33-19-202(1). This violation is multiplied by the
7 number of individuals who were entitled to receive an annual notice of information practices,
8 but did not receive one.

9 7. Pursuant to Mont. Code Ann. § 33-31-301(2), a health maintenance organization
10 may not issue or deliver an evidence of coverage to a person in this state before a copy of the
11 evidence of coverage is filed with and approved by the commissioner

12 8. By failing to receive approval from the commissioner before issuing their 2002
13 evidence of coverage to persons in this state, Respondents are in violation of Mont. Code Ann.
14 §§ 33-31-301(2). This violation is multiplied by the number of evidence of coverages that
15 were issued.

16 9. Pursuant to Mont. Code Ann. § 33-1-317, the Insurance Commissioner may
17 impose an administrative fine of up to \$25,000.00 per each violation of the Montana Insurance
18 Code.

19 AGREEMENT

20 The Respondents hereby stipulate and agree to the following:

21 1. Respondents are a health maintenance organization and a health service
22 corporation, holding a certificates of authority issued by the Insurance Commissioner and
23 Department to transact the business of insurance in Montana.

24 2. The Insurance Department and the State Auditor and Commissioner of Insurance
25 have jurisdiction over the subject matter of the above-entitled proceeding.

26 3. Respondents acknowledge that their authorized representative signing this

27 ~~Consent Agreement has read and understands each term of this Consent Agreement and Final~~

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1 Order. Respondents acknowledge that they enter into this Consent Agreement voluntarily, and
2 without reservation. Each Respondent acknowledges that this Consent Agreement constitutes
3 the entire agreement between the parties and that no other promises or agreements, either
4 express or implied, have been made by the Department or by any member, officer, agent or
5 representative of the Department to induce Respondent to enter into this Consent Agreement.

6 4. The Department contends as set forth in the preceding Factual Assertions and
7 Conclusions of Law and Respondents neither admit nor deny the same. Accordingly, the
8 Department and Respondents have elected to resolve these matters as follows:

9 (a) Respondents shall pay an administrative fine totaling \$10,000.00 for
10 violations of Mont. Code Ann. §33-19-202(1) to the Department within 30 days following the
11 signing of the Final Order in this matter;

12 (b) Respondents shall pay an administrative fine totaling \$10,000.00 for
13 violations of Mont. Code Ann. §33-31-301(2) to the Department within 30 days following the
14 signing of the Final Order in this matter;

15 (c) Respondents specifically and affirmatively waive a contested case hearing
16 and all rights to appeal under the Montana Administrative Procedure Act, and elects to resolve
17 this matter on the terms and conditions set forth herein;

18 (d) Respondents agree that compliance with this Consent Agreement and Final
19 Order shall be a final compromise and settlement of the matters set forth herein;

20 (e) Respondents agree that this Consent Agreement shall be incorporated and
21 made a part of the attached Final Order issued by the Commissioner herein;

22 (f) Respondents further understand that, upon the signing of the Final Order by
23 the Commissioner or his representative, this Consent Agreement and Final Order will be an
24 order of the Commissioner and failure to comply with the same may constitute separate
25 violations of the Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or
26 other applicable statutes or rules, and may result in subsequent legal action by the Department;

27 and

(g) Respondents fully and forever release and discharge the Commissioner, Department, and all Department employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this Consent Agreement.

5. Respondents understand that this Consent Agreement is not effective until such time as the following Final Order is signed.

6. Respondents understand that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

NEW WEST HEALTH PLAN AND NEW WEST HEALTH SERVICES, RESPONDENTS

By:

Their:

[Signature]
CEO

10-23-03
Date

Subscribed and Sworn to before me this 29 day of October, 2003.



[Signature]
Notary Public for the State of Montana
Residing at East Helena, Montana
My commission expires August 19, 2005

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

[Signature]
Christina Lechner Goe, Staff Attorney
Insurance Department

10-20-03
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of OCTOBER, 2003, I served
a true and accurate copy of the foregoing Consent Agreement and Final Order upon the
Respondents, by mail, postage prepaid, at the following address, and hand-delivered to:

Denise Pizzini
General Counsel
New West Health Services and
New West Health Plan
40 West 14th Street, Suite 3
Helena, MT 59601



Darla Sautter

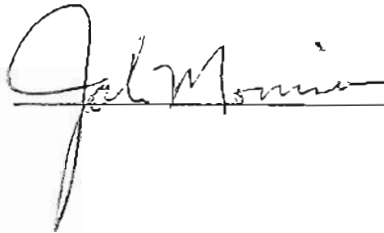
1 FINAL ORDER

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. §
3 33-1-101 et seq., and upon review of the forgoing Consent Agreement and good cause
4 appearing therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
6 Department and New West Health Plan and New West Health Services is hereby adopted as if
7 set forth fully herein.

8 DATED this 30 day of October, 2003.

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10 JOHN MORRISON
11 State Auditor and Commissioner of Insurance

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